



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Systems Research Laboratories, Inc.
File: B-229968
Date: March 21, 1988

DIGEST

1. Protest is untimely where not filed until more than 1 month after protester received information from contracting agency pursuant to Freedom of Information Act which put protester on notice of grounds of protest.

2. An untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules since the issue raised is not of widespread interest to the procurement community.

DECISION

Systems Research Laboratories, Inc. (SRL), protests that the Air Force improperly permitted Modcomp Federal Services, Inc. (MFSI), to submit a best and final offer (BAFO) in substitution for Modular Computer Systems, Inc. (MODCOMP), under request for proposals (RFP) No. F33601-86-R9042, issued by the Department of the Air Force, Wright-Patterson Contracting Center, for maintenance of computer systems and components. SRL contends that the Air Force improperly allowed MFSI to submit a BAFO because MFSI was created by MODCOMP for the purpose of circumventing the Air Force's finding that MODCOMP was not a responsible offeror, which was not a legitimate business purpose.

We dismiss the protest as untimely.

The Air Force reports that it agreed to permit MFSI to submit a proposal in substitution for MODCOMP as part of a settlement agreement resolving a protest MODCOMP had brought before the General Services Administration's Board of Contract Appeals (GSBCA). By letter to the Air Force dated October 26, 1987, SRL asked, pursuant to the Freedom of Information Act (FOIA), for all documentation pertaining to the protest. The Air Force replied by letter dated November 12, providing, among other documents, a copy of

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an amended joint stipulation between the parties to the protest. SRL acknowledges receiving the documents in November 1987. The amended joint stipulation stated that: "The Air Force has agreed to request a new round of BAFOs regarding solicitation No. F33601-86-R9042 and MFSI will be permitted to submit a revised proposal, provided sufficient documentary evidence is supplied by MODCOMP to allow the contracting officer to determine that MODCOMP has transferred the entire portion of its business embraced by its proposal to MFSI" On January 11, 1988, SRL protested to our Office the substitution of MFSI for MODCOMP in the procurement.

Our Bid Protest Regulations require that a protest based on other than an apparent impropriety in the solicitation must be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2) (1987); Viereck Co., B-222520, Aug. 5, 1986, 86-2 CPD ¶ 152. SRL should have known its basis of protest in November 1987, when it received, pursuant to its FOIA request, a copy of the amended joint stipulation indicating that the Air Force would permit MFSI to submit a proposal in substitution for MODCOMP. Since SRL did not protest to our Office until January 11, 1988, more than 1 month after it received the information which formed the basis of its protest, its protest is untimely and will not be considered. See Troglodyte Society, Inc., B-227407 et al., June 25, 1987, 87-1 CPD ¶ 632, aff'd, Troglodyte Society, Inc.--Request for Reconsideration, B-227407.3, July 29, 1987, 87-2 CPD ¶ 113.

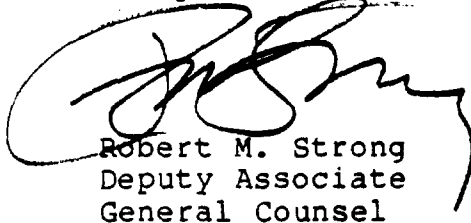
SRL states that the only thing it learned from the FOIA response was that there was a possibility that the Air Force might let MFSI submit an offer, and argues that it had no duty to protest a mere possibility that the Air Force would accept an MFSI proposal for award. SRL contends that any protest before the Air Force actually accepted an offer from MFSI would have been premature. In support of its contentions, SRL cites such cases as Gulton Industries Inc. et al., B-203625, July 20, 1982, 82-2 CPD ¶ 59, and Sony Corporation of America, B-224373.2, Mar. 10, 1987, 87-1 CPD ¶ 267.

The cases cited by SRL are inapposite, since none concern a protest to our Office after the protester received a copy of the specific terms of a settlement obligating an agency to permit the substitution of one offeror for another under an RFP. For example, in Gulton Industries, Inc., B-203625, supra, we held that the protester was not required to protest exercise of an option until informed of the specific terms of the option exercise which formed the bases for protest. Here, however, the FOIA documents informed SRL of

the terms under which the Air Force would permit MFSI to submit a proposal. Sony Corporation of America, B-224373.2, supra, is likewise distinguishable. There, we held premature a protest that a contract modification proposed by the awardee was outside the scope of the contract where the agency had not yet decided whether the proposed change would be made. In the case at hand, the FOIA documentation indicated that the Air Force had decided to permit MFSI to submit a proposal, subject to certain conditions, which SRL contends was improper as MFSI was not created for a legitimate business purpose but as a subterfuge to circumvent a nonresponsibility determination of MFSI's predecessor.

SRL requests that if we find its protest untimely, we consider its protest pursuant to the exception in our timeliness rules for a protest that raises a significant issue. See 4 C.F.R. § 21.2(c). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community and involves a matter that has not been considered on the merits in prior decisions. Shamrock Foods Company/Sun West Services, Inc.--Reconsideration, B-228892.2, Nov. 30, 1987, 87-2 CPD ¶ 530. SRL's protest does not fall within this exception, since the substitution of one offeror for another in this particular procurement, pursuant to the terms of a settlement reached in a protest, is not of widespread interest.

The protest is dismissed.



Robert M. Strong
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General Counsel